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Director

Legislative Services Office

Idaho State Legislature

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MEMORANDUM

TO: Senators LAKEY, Ricks, Burgoyne and,
Representatives CHANEY, Hartgen, Gannon

FROM: Ryan Bush - Principal Legislative Drafting Attorney

DATE: June 02, 2021

SUBJECT: Temporary Rule

IDAPA 61.01.01 - General Provisions and Definitions - Adoption of Temporary Rule - Docket No. 61-0101-2102

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Ryan Bush at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

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IDAPA 61 – IDAHO STATE PUBLIC DEFENSE COMMISSION

61.01.01 – GENERAL PROVISIONS AND DEFINITIONS

DOCKET NO. 61-0101-2102

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is on the date the agency’s 2020 pending rules become final upon the 1st Regular Session of the 66th Idaho Legislature’s adjournment on *sine die* or adoption of concurrent resolution, as applicable.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 19-850(1)(a), Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The temporary rule was prepared in collaboration with stakeholders and presented to the legislature as part of the legislature’s review of the agency’s 2020 pending rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

To confer a benefit on indigent persons represented at public expense and the defending attorneys and counties responsible for indigent representation. Indigent persons are entitled to indigent defense services and the stakeholders providing those services are regulated in part by the rules the agency is obligated to promulgate.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Kathleen Elliott at (208) 332-1735.

DATED this May 17, 2021.

Kathleen J. Elliott, Executive Director
Idaho State Public Defense Commission
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**THE FOLLOWING IS THE TEMPORARY RULE FOR DOCKET NO. 61-0101-2102
(Only Those Sections With Amendments Are Shown.)**

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Active Case. A Capital Case is active when it is not stayed. All other Cases are active when there is an appointment, appearance, filing or investigation in the reporting period or it is not stayed. (SineDie21)

02. Annual Report. The Defending Attorney report required by Section 19-864, Idaho Code, including CLEs, Caseloads, Workloads and other information requested for the October 1 through September 30 reporting period to complete the Annual Report form provided by PDC Staff. (SineDie21)

03. Capital Case. A case in which the state has given notice it will seek the death penalty or is legally entitled to seek the death penalty under Section 18-4004A, Idaho Code. (SineDie21)

04. Capital Defending Attorney. A Defending Attorney who meets the qualifications for and is on the Capital Defending Attorney Roster. (SineDie21)

05. Capital Defending Attorney Roster. The PDC's list of Defending Attorneys eligible for appointment by a court to represent an Indigent Person at public expense in a Capital Case. (SineDie21)

06. Case. All related charges against an individual from a single incident, transaction or occurrence filed within a single case number. A probation violation or motion for contempt is counted as a separate Case. (SineDie21)

07. Caseload. A Defending Attorney's total number of Active Cases during the applicable reporting period as counted under IDAPA 61.01.02, "Requirements and Procedures for Representing Indigent Persons," Paragraph 060.05.c. A county's total Caseload to determine compliance with Workload rules is calculated as the mean of the Felony Case Equivalent calculation for each of the preceding three (3) years. (SineDie21)

08. Compliance Plan. A county's plan for meeting Public Defense Rules and curing any Deficiencies including detailed action items and completion dates. (SineDie21)

09. Cost Analysis. A detailed explanation of the expected expenses for the county to complete its Compliance Plan and how the county is proposing to pay for those expenses. (SineDie21)

10. Defending Attorney. Any attorney employed by a county or under contract with a county as an institutional Defending Attorney or a contract Defending Attorney or otherwise appointed by a Court to represent adults or juveniles at public expense. (SineDie21)

11. Defending Attorney Roster. The PDC's list of Defending Attorneys eligible for appointment by a court to represent an Indigent Person at public expense in a non-capital Case. (SineDie21)

12. Deficiency. The noncompliance with any Public Defense Rule by a county, Defending Attorney, employee, contractor, representative or other agent. (SineDie21)

13. Executive Director. PDC employee appointed by the Commission under Section 19-850(2)(a), Idaho Code. (SineDie21)

14. Felony Case Equivalent (FCE). The calculation after all Case types are converted to their felony equivalent to determine compliance with Caseload rules. (SineDie21)

15. Financial Assistance. The state funding a county may request and may be awarded under Section 19-862A, Idaho Code. (SineDie21)

16. Indigent Person. A person who, at the time his need is determined under Section 19-854, Idaho Code, is unable to provide for the full payment of a Defending Attorney and all other necessary expenses of representation. (SineDie21)

17. Initial Appearance. The first appearance of the defendant before any judge. In the event a defendant appears before more than one judge, the first appearance before the first judge constitutes the Initial Appearance. (SineDie21)

18. Material. An action or failure to act that could have an immediate and significant negative impact on the effective representation of Indigent Persons or result in the misuse of state funds. (SineDie21)

19. PDC. The Idaho State Public Defense Commission including PDC Staff and the Commission. Information reported to the PDC will be reported using available PDC forms. (SineDie21)

20. PDC Staff. Employees of the Commission who report to the Executive Director. References to PDC Staff include the Executive Director unless otherwise specified. (SineDie21)

21. Public Defense Rules. Any rule promulgated by the Commission under Section 19- 850(1)(a), Idaho Code. (SineDie21)

22. Vertical Representation. A Defending Attorney ~~appointed to represent~~ is responsible for the continuous and personal representation and oversight of an Indigent Person's case ~~shall~~, to the extent reasonably practicable, ~~continuously and personally oversee the representation of the client's case~~ through trial proceedings and preservation of right to appeal. For purposes of this definition reasonably practicable means a Defending Attorney will make ~~all~~ efforts to personally represent the client during all substantive proceedings where the facts of the case are discussed by counsel or the Court, ~~including but not limited to advising the Court of any conflict at the time of setting~~, providing ~~ing~~ accurate unavailable dates at the time of setting, and seek continuances in the case of unforeseen absences, ~~filing a motion or stipulation to continue~~. The Indigent Person may consent to have another Defending Attorney appear at a hearing. Each county is responsible to support and provide resources as necessary to ensure Vertical Representation. (SineDie21)(SineDie21)T

23. Willful. An action or failure to act that is deliberate and with knowledge. (SineDie21)

24. Workload. A Defending Attorney's Caseload adjusted to account for available support staff, Case complexity, and distribution through the reporting year and other duties such as supervision. (SineDie21)

011. – 999. (RESERVED)